

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

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OA. 350/1046/2016
MA. 350/313/2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Surajit, son of late Manbodh, aged about 37 years, unemployed, residing at Near Water Tank, Gangkholi, New Traffic, Police Station: Kharagpur Town, Dist- Paschim Medinipore, Pin- 721 301.

.....Applicant.

-versus-

1. Union of India, service through the General Manager, South Eastern Railways, Garden Reach, Kolkata- 700 043.
2. The Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata- 700 043.
3. The Deputy Chief Personnel Officer (H..Q), South Eastern Railways, Garden Reach, Kolkata- 700 043.
4. The Senior Divisional Railway Manager, Kharagpur, South Eastern Railway, Post Office- Kharagpur, Dist- Paschim Medinipore, Pin- 721 301.

.....Respondents.

For the Applicant : Mr. T. K. Biswas, Counsel

For the Respondents : Ms. Gargi Roy, Counsel

Heard On: 13.08.2019.

Date of order: 23.8.19.

ORDER

Per Ms. Bidisha Banerjee, JM:

In this OA, the applicant has prayed for following reliefs:

"8(a) A direction be given upon the respondent authorities to provide immediate appointment to the applicant on compassionate ground under died in harness category in terms of Railway Service rules;

(b) A direction be given upon the respondent authorities to rescind, cancel and withdrawn from giving effect and/or any further effect and/or any further effect to the letter being No. E/CC/Engg/1243/03/Sur dated 28.09.2007 dated 7.5.2000 issued by the Divisional Railway Manager, Kharagpur;

(c) A direction be given upon the respondents to allow the applicant to appear before the Interview Board for appointment of any suitable post on compassionate ground under died in harness category;

(d) A direction be given upon the respondents to transmit the entire records of this case before this Learned Tribunal for adjudication of the points in issue;

(e) An interim order be passed directing the respondents to keep one post vacant (Group "D") till the disposal of the application;

(f) And to pass such other further order or orders as to this Learned Tribunal may deem fit and proper;"

2. It is an admitted fact that the father of the applicant has expired while in service on 16.02.1996. The representation of the widow mother seeking employment assistance in favour of her 3rd son, namely, Surajit was not disposed of until 07.05.2001 when the applicant was informed that due to fake school certificate of her older son, her prayer for employment assistance was not entertained. On 20.04.2007, the OA. 1243/2003 preferred by the applicant was disposed of with the following orders:

"It is manifest therefrom that the authority without considering the eligibility of the applicant has turned down the application on the ground that his elder brother was alleged to have submitted fake school certificate. The grounds stated in the aforesaid letter does not appeal to reasons and, therefore, the order is no order.

Under the aforesaid circumstances, the applicant, if he is so advised, may submit a better application for compassionate appointment to the respondents annexing necessary documents within a short period and the respondents are directed to pass a reasoned order on the application of the applicant in accordance with the rules within 3 months from the date of its receipt and communicate

the decision within 15 days therefrom. The application is disposed of. No order as to cost."

Pursuant thereto, on 14.05.2007, the present applicant preferred a detailed representation to the Divisional Railway Manager, South Eastern Railway, Kharagpur which was rejected on 28.09.2007. The rejection order reads as under:

"After going through your "better application" and the case file, I am convinced that your mother's application dt. 20.11.98 as annexed for the first time, is a fabricated one because the EA on CE case in favour of Fagu (first son) was only regretted vide letter dt. 22.12.98, much later than your mother's alleged application dt. 20.11.98 implying that while the administration was actively considering the case of your elder brother Fagu, you claim to have made another appeal for EA on CG in your favour which is not possible. This has been done only as an attempt to claim benefit under Estt. Srl. No. 195/2000.

Further, the certificate issued by Secretary, Adult Education Centre, in your favour cannot be considered as Class VIII passed certificate for purpose of employment, which is mandatory for entering into Railway.

Hence, in my considered opinion, you are not entitled for appointment on compassionate ground.

This disposes your representation dt. 13.05.07."

The present OA has been preferred in the year 2016. Therefore, after a long slumber of 9 years from the said rejection, the applicant has come up with the OA to seek consideration for employment assistance on compassionate ground. He has also preferred an MA to seek condonation of delay in preferring the OA with no explanation of the enormous delay in approaching this Tribunal.

3. The respondents have categorically replied to the application seeking condonation that the period of delay is to be reckoned from the date of issuance of reasoned and speaking order and that after a lapse of such considerable period of time prayer for condoning the delay would be unsustainable in the eye of law as the applicant was a fence sitter all the

while. The respondents have further cited the decision in OA.858/2014 (Subhas Chandra vs. U.O.I & Ors.) in support of their contention.

4. Heard ld. Counsel for both the parties and perused the materials placed on record.

5. I would note the implication of the decision in **Umesh Kr. Nagpal vs. State of Haryana** reported in **1994(4) SCC 138** where the Hon'ble Apex Court held that :

"The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds thereby leaving his family in penury and without means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it to get over the emergency.

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The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis.

6. In as much as the sole object of granting compassionate appointment is to enable a family left behind by an employee, to tide over the sudden crisis faced due to loss of its bread earner, fumigating my mind with the landmark decision in **Umesh Kr. Nagpal**, I find that the delay of 9 long years without sufficient explanation and justification, in approaching this Tribunal is unpardonable.

7. In the aforesaid backdrop, the MA fails and consequently the OA is dismissed.

(Bidisha Banerjee)
Member (J)

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